

In claim 11, line 1, change "Process" to --The process--;
line 2, change "characterized in that" to --wherein--; and
delete "step";
line 6, delete the hyphen "-";
line 7, delete the hyphen "-";
line 9, delete the hyphen "-".

In claim 12, line 1, change "Process" to --The process--;
line 2, change "characterized in that" to --wherein--; and
delete "step".

Please add the following new claim:

P2
-14. The process according to claim 5, wherein the enzymes are selected from
the group consisting of alkaline phosphatase, peroxidases and β -lactamases.

15. The process according to claim 1, wherein the amount of the recognition
agent which has been complexed in b) by the reference antibiotic is inversely
proportional to the amount of the antibiotic or antibiotics present in the biological fluid.--

REMARKS

Favorable reconsideration is requested in view of the foregoing amendments
and following remarks.

Claims 1-15 are pending, claims 1-12, 14 and 15 are under consideration and
claim 13 is withdrawn from consideration as being directed to a non-elected invention.

First, it is noted that the Applicants claim priority to Belgium Application No.
09800485 filed on July 25, 1998, as is set forth in the Declaration. The Examiner has
not acknowledged the Claim for Priority or receipt of the Priority Document which was

filed on March 26, 1999. The Examiner is respectfully requested to acknowledge the Claim for Priority and receipt of the Priority Document in the next Official Action.

The amendments to the claims are essentially editorial in nature and are in a response to the Examiner's rejections under 35 USC §112, second paragraph. Therefore, further discussion of these amendments are not necessary at this time. It is noted, however, that claim 14 defines the enzymes that were previously exemplified in claim 5. Claim 15 is supported by page 11, lines 2-5 of the specification.

Applicants reaffirm their election of Group I, claims 1-12, the process of detecting an antibiotic. Claim 13 has not been cancelled in this application and it is requested that the Examiner reconsider the restriction requirement on the basis that the kit of claim 13 is used in the process of claims 1-12 and newly added claims 14 and 15.

The Examiner objected to the application on the basis that it did not contain an Abstract of the Disclosure as required by 37 CFR §1.72(b). Attached hereto, on a separate sheet of paper, is an Abstract of the Disclosure for this application. The Examiner is respectfully requested to enter the abstract into the application so that the requirements 37 CFR §1.72(b) are met.

The Examiner indicates that the application was filed with informal drawings acceptable for examination purposes only. Applicants will have formal drawings prepared upon the indication of allowable subject matter in this application. Given that the drawings in the application are acceptable for examination purposes only, the drawings are not required at this time.

Claims 1-12 were rejected under the second paragraph of 35 USC §112, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicants respectfully traverse each of the stated grounds for rejecting claims 1-12.

Claim 1 was rejected on the basis that the phrase "the mixture" in line 7 and the phrase "the complexation" in line 8 lacked proper antecedent basis. Claim 1 has been amended to provide proper antecedent basis for each of the phrases objected to by the

Examiner. In step a) of the process, it is indicated that the biological fluid is placed into contact with the an amount of the recognition agent to form a mixture. In addition, the phrase the "the complexation" has been changed to the phrase "for complexation".

The Examiner further rejected the phrase "recognition agent bound to the support", found in lines 17 and 18 of claim 1. Applicants have amended this claim language to indicate that the amount of the recognition agent which has been complexed in step b) by the reference antibiotic immobilized on the support. Support for this language is found on page 7, lines 13-18. Clearly, it is the Applicants' intention that the recognition agent is not bound to the support but the recognition agent complexes with the reference antibiotic immobilized on the support.

Claim 1 was rejected on the basis that it does not recite any correlation between determining the amount of the recognition agent bound to the support and an indication of the presence of an antibiotic in the biological fluid. In response to this rejection, Applicants have amended claim 1 to indicate that step c) of the claimed process is detecting an antibiotic or antibiotics by determining the amount of the recognition agent which has been complexed in step b) of the process of the referenced antibiotic mobilized on the support. Applicants submit that this claim limitation is clear and that if its determined that all of the recognition is complexed with the reference antibiotic immobilized on the support, then the biological fluid has no antibiotic containing the β -lactam ring. Likewise, if a small amount of the antibiotic immobilized on the support is complexed with the recognition agent, one skilled in that art can determine the amount of the antibiotic containing the β -lactam ring in the biological, given that the amount of the recognition agent in the system is known and the amount of the reference antibiotic mobilized on the support which has been complexed with the recognition can also be determined. It is respectfully submitted that claim 1, as amended above, clearly defines Applicants' claimed process.

In addition, the Examiner's attention is directed to page 10, line 26- page 11, line 5 which describes process step c). As can be seen in this paragraph, the type of

labeling agent determines how the amount of the antibiotic in the biological fluid is determined. One skilled in the art, having this description before them in conjunction with considering claim 1 would fully understand the metes and bounds of claim 1.

Applicants have also added claim 15 which specifies that the amount of the recognition agent which has complexed with the referenced antibiotic immobilized on the support is inversely proportional to the amount of the antibiotic or antibiotics present in the biological fluid. This language is clearly supported on page 11, lines 2-5.

The Examiner rejected claim 11 on the basis that the use of the hyphens renders the claim indefinite. In response to this rejection, Applicants have deleted the hyphens from claim 11.

Claims 1-12 were rejected under 35 USC §102(b) as being anticipated by Piasio, U.S. Patent 5,434,053. Applicants respectfully traverse this rejection.

First, it is pointed out that the Piasio patent corresponds to European Patent Application 593 112 which is described on page 4 of the specification. Piasio fails to anticipate the Applicants' claims reference Piasio does not teach using a receptor which is sensitive to antibiotics containing the beta-lactain ring obtained from Bacillus licheniformis. Contrary to the Examiner's assertion, Bacillus licheniformis is not disclosed in column 2, lines 33-45.

In order for a reference to anticipate a claim, each and every claim limitation must be taught or suggested by the reference. Clearly, Piasio does not disclose using Bacillus licheniformis to produce the receptor which is sensitive to the antibiotics. Therefore, Piasio does not anticipate the Applicants' claims.

It is further pointed out that there is no suggestion found in Piasio which would direct one skilled in the art to use Bacillus licheniformis to produce a receptor for an antibiotic containing a beta-lactain ring. Therefore, Piasio, alone, also fails to render the Applicants' claims obvious under 35 USC §103.

In order for a claim can be rendered unpatentable under 35 USC §103, the Examiner must point out why one skilled in the art would be motivated to modify the teachings of the reference to arrive at the claimed invention. The Examiner has provided no reasons why one skilled in the art would select a receptor produced from Bacillus licheniformis. In the absence of some teaching to use Bacillus licheniformis Piasio, alone, also fails to render the Applicants' claims obvious under the meaning of 35 USC §103.

Finally, it is noted that an Information Disclosure Statement is being filed concurrently herewith. A single U.S. Patent is disclosed and the copy of the European Search Report which cites this reference is also attached.

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Such action is solicited.

If the Examiner has any questions regarding this Amendment, the application in general or has any suggestions for placing the application in condition for allowance, Examiner is respectfully requested to call the undersigned at the number listed below.

Respectfully submitted,

Jacques DEGELAEN et al.

By:


Ralph H. Dean, Jr.
Registration No. 41,550
Attorney for Applicants

RHD/jlw
Washington, D.C.
Telephone (202) 721-8200
Facsimile (202) 721-8250
August 23, 2000